SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 86.

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND JOHN BURKE, TREASURER OF THE UNITED STATES, APPELLANTS,

vs.

E FOREST L. ORMES, ADMINISTRATOR OF THE ESTATE OF BELVA A. LOCKWOOD, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
ption	a	[illegible]
nscript of record from the Supreme Court of the District of Columbia	1	1
tion	1	1
of complaint	1	1
er to show cause	6	6
Marshal's return	6	6
wer of William G. McAdoo and John Burke	6	6
wer of Susan Sanders	9	9
ice	11	11
er to note appeal and to issue citation to plaintiff	12	12
tion and service	12	12
gnment of errors	13	13
mation of record on appeal	14	14
k's certificate	15	15
gestion of death and order of substitution	16	17
ision	17	17
ion, Van Orsdel, J.	18	17
ment	21	22
tion for appeal	22	23
gnment of errors	24	24
r allowing appeal	26	24
tion and service	27	25
k's certificate	28	25

a

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

April Term, 1917.

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND John Burke, Treasurer of the United States, appellants,
vs.
DEFORREST L. ORMES, ADMINISTRATOR OF THE ESTATE OF Belva A. Lockwood, deceased.
No. 3078.

Appeal from the Supreme Court of the District of Columbia.

Filed March 28, 1917.
Printed April 27, 1917.

Court of Appeals of the District of Columbia.

No. 3078.

WILLIAM G. McADOO, &c., et al., Appellants,

vs.

BELVA A. LOCKWOOD.

4 Supreme Court of the District of Columbia.

In Equity. No. 34168.

BELVA A. LOCKWOOD, Plaintiff,

v.

SUSAN SANDERS, WILLIAM G. McADOO, Secretary of the Treasury; JOHN BURKE, Treasurer of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed March 11, 1916.

In the Supreme Court of the District of Columbia.

In Equity. No. 34168.

BELVA A. LOCKWOOD, Plaintiff,

v.

SUSAN SANDERS, WILLIAM G. McADOO, Secretary of the Treasury; JOHN BURKE, Treasurer of the United States, Defendants.

To the Supreme Court of the District of Columbia:

Plaintiff states as follows:

1. That plaintiff, Belva A. Lockwood, is a citizen of the United

States, and a resident of the District of Columbia; that she sues herein in her own right.

2. That plaintiff is informed and verily believes, that the defendant, Susan Sanders, is a citizen of the United States, and is a resident of Vinita, in the State of Oklahoma; but when last heard of, was sojourning in the City of St. Louis, State of Missouri; that she is here sued in her own right.

That the defendant, William G. McAdoo, is the Secretary of the Treasury of the United States, and is here sued in that capacity.

That the defendant, John Burke, is the Treasurer of the United States and is here sued in that capacity.

3. That during the late civil war, Ebbie Love, the mother of defendant, Susan Sanders, resided in the then Indian Territory,
2 and during said war the United States military forces, under proper authority, did take from said Ebbie Love army stores and supplies and did convert same to the use of the United States; that said Ebbie Love departed this life in the year 1868, leaving her surviving said defendant, Susan Sanders, and a son, named Daniel Webster Love; that said Daniel Webster Love departed this life thereafter, while a minor, leaving said defendant, Susan Sanders as his only heir, by reason of which facts, said Susan Sanders became the sole heir of her said mother, and the sole owner of a claim against the United States for compensation for said property so taken for public use, from said Ebbie Love.

4. That said defendant, Susan Sanders, being desirous of presenting and prosecuting said claim for compensation against the United States, did employ plaintiff, a practicing lawyer, to act as her attorney in matter of presenting and prosecuting said claim; that plaintiff did, as such attorney at law for said defendant, take such necessary and proper steps in the matter, as caused said claim (or a bill in terms providing for its payment) to be referred to the Court of Claims of the United States; that thereafter plaintiff did enter her appearance before said court as attorney of record for said defendant, and did continue to represent said defendant before said court; that said claim or case of said defendant was brought to trial in said court; that on said trial, the findings of fact made by said court were unfavorable to said defendant, Susan Sanders; that it was necessary to thereafter prepare and file a motion for new trial; that finally, on May 2, 1910, new findings of fact were filed in said claim by said Court of Claims, in the nature of an allowance in favor of
3 said defendant, Susan Sanders, in the sum of One Thousand Two Hundred Dollars ($1,200); that thereafter, upon motion in that behalf made by plaintiff, as attorney of record in matter of said claim, said favorable findings of fact were certified by said court to the President of the United States Senate on May 6, 1910.

5. That thereafter, said claim remained pending before the Congress of the United States, without final action thereon, until March 4, 1915, on which date was approved a certain Act of Congress (Public Act No. 289, 63rd Congress; 38 Stats., L., 962-981), making an appropriation for payment of said claim, with others of a similar nature.

6. That on April 27, 1904, or thereabouts, and while said claim was pending in said Court of Claims, said defendant, Susan Sanders did agree, in writing, to pay to plaintiff herein, as an attorney fee, a sum equal to twenty per centum (20%) of any sum which might be collected upon said claim, said defendant, Susan Sanders agreeing to pay expenses of taking testimony; that said agreed attorney fee amounts to the sum of Two Hundred Forty Dollars ($240), in view of said appropriation, so based upon said findings of fact or allowance so secured for said defendant by plaintiff, as her attorney.

7. That since the making of said appropriation, said defendant, Susan Sanders, has been in the City of Washington, District of Columbia, and has attempted, as plaintiff is informed and verily believes, to secure payment to herself, of said entire sum of One Thousand Two Hundred Dollars ($1,200), with intent, as plaintiff verily believes to defraud plaintiff herein of her said agreed attorney fee; that said defendant, Susan Sanders, has refused to pay plaintiff herein said agreed attorney fee or any part thereof, and has thereby attempted to wholly repudiate said fee contract, whereunder plaintiff herein did render her professional services during a period of years, beginning at least as early as 1904.

8. That plaintiff is informed and verily believes, that said defendant, Susan Sanders, is a person of but little, if any property, subject to execution; that plaintiff believes that it is the intent of said defendant to secure payment of said total sum of One Thousand Two Hundred Dollars ($1,200), appropriated as above set forth, in payment of said claim, and to remove said fund from the jurisdiction of this honorable court, with intent to defraud plaintiff herein of her lawful and agreed attorney fee as above set forth.

9. That plaintiff is informed and verily believes that the officers of the Treasury Department will, unless restrained by order of this honorable court, issue a Treasury warrant in said sum of One Thousand Two Hundred Dollars ($1,200) to said Susan Sanders, and will transmit same to said Susan Sanders; that by virtue of the professional services so rendered by plaintiff in the matter of said claim, as above set forth, plaintiff claims and asserts an equitable lien upon the fund in effect produced, at least in large measure, by her said services; that said lien will be defeated and lost to plaintiff if said defendant is permitted to secure possession of said fund, and to remove same from the jurisdiction of this court.

10. That plaintiff is without any plain, adequate and complete remedy at law, by reason of the facts hereinabove set forth.

Wherefore, the premises considered, plaintiff prays:

I.

That process issue out of this court, directed to said defendant, Susan Sanders, and to defendant, William G. McAdoo, Secretary of the Treasury, and to defendant, John Burke, Treasurer of the United States, commanding them and every one of them, to appear and make answer to this bill of complaint, but not under oath, answers

under oath being hereby expressly waived; and to abide by and perform the orders and decrees of this court in the premises.

II.

That the defendant, Susan Sanders, be perpetually enjoined from applying for, demanding or receiving from the United States, or from any officer thereof, any warrant, draft, check or order in payment of said claim, or any part thereof.

III.

That defendant, William G. McAdoo, as Secretary of the Treasury, and defendant, John Burke, as Treasurer of the United States, and their successors in office, be enjoined from issuing to defendant, Susan Sanders, any warrant, draft, check or order, in payment of said claim, as appropriated for, or for any part thereof.

IV.

That a receiver be appointed by this honorable court, with
6 authority to demand and receive from the United States and the officers thereof, the payment of the sum appropriated in payment of said claim, and to receipt for the same, and to retain same in his possession to await the further orders of this court in the premises.

V.

That a rule may issue herein, against defendant, Susan Sanders, directing her to show cause, on or before a certain day, why she should not be enjoined from applying for, demanding or receiving from the United States or from any officer thereof, any warrant, draft, check or order, in payment of said claim, or any part thereof.

VI.

That a rule may issue herein, against defendant, William G. McAdoo, as Secretary of the Treasury, and John Burke, as Treasurer of the United States, and each of them, directing them and each of them, to show cause in this court, on or before a certain day, why they and each of them, should not be restrained by a preliminary injunction or restraining order, from issuing any warrant, draft, check or order, to defendant, Susan Sanders, in payment of said claim, or for any part thereof.

VII.

That this court will determine and decree that plaintiff is entitled to have and recover from defendant, Susan Sanders, a sum equal to twenty per centum (20%) of said sum of One Thousand Two Hun-

dred Dollars ($1,200), so appropriated, as aforesaid, to-wit, the sum of Two Hundred Forty Dollars ($240), and that it be de-
7 creed that plaintiff have an equitable lien upon said fund, and on any warrant issued in its payment, as security for payment of said sum of Two Hundred Forty Dollars ($240), with costs and interest to be taxed.

VIII.

Plaintiff further prays such other and general relief in the premises as to this honorable court shall seem meet and proper, and as the exigencies of the case may require.

BELVA A. LOCKWOOD,
Plaintiff,
By MARY O'TOOLE, *Attorney.*

MARY O'TOOLE,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Mary O'Toole, being first duly sworn according to law, deposes and says: I am the attorney for the plaintiff named in the above bill of complaint; I have read said bill of complaint and know the contents thereof; that the allegations therein made are true to the best of my knowledge, information and belief; that affiant verifies this bill of complaint by reason of the absence of plaintiff from the District of Columbia, and of the urgency of the occasion for presenting this bill to this court; that affiant has seen the agreement mentioned and described in said bill of complaint, which agreement is now on file with the U. S. Court of Claims.

MARY O'TOOLE.

8 Subscribed and sworn to before me this 11th day of March, A. D., 1916.

[SEAL.]

BERTHA P. ISAACS,
Notary Public, D. C.

ELLEN S. MUSSEY,
Of Counsel.

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

Mary O'Toole, being duly sworn, deposes and says: That she is the attorney for the plaintiff herein; that said plaintiff is now sojourning in the State of Florida; that said plaintiff is eighty-six years of age and over and is somewhat decrepit and has barely means to support herself; that said plaintiff is without means to prepay the costs of this suit and therefore begs leave of the Court to file the same without such prepayment.

That the reason why this affidavit is made by said attorney and

not by the plaintiff is because the plaintiff is not now within the District of Columbia.

MARY O'TOOLE.

Subscribed and sworn to before me this 11th day of March, 1916.
[SEAL.] BERTHA P. ISAACS,
Notary Public, D. C.

(Endorsed.)

Let the within bill be filed without prepayment of costs.
WALTER I. McCOY, *Justice.*

9 *Order to Show Cause.*

Filed March 11, 1916.

* * * * * * *

Upon consideration of the Bill of Complaint of Belva A. Lockwood, filed herein on the 11th day of March, A. D. 1916, it is this 11th day of March, A. D. 1916, ordered

That defendant, William G. McAdoo, as Secretary of the Treasury, and defendant, John Burke, as Treasurer of the United States, and each of them, show cause in this court, on or before the 7th of April, A. D. 1916, at ten o'clock A. M., why they and each of them, should not be restrained and enjoined from issuing any warrant, draft, check or order, to defendant, Susan Sanders, in payment of the claim of said Susan Sanders, as appropriated for by Act of Congress approved March 4, 1915 (Public Act No. 289; 38 Stats., 1, 962), or for any part thereof: Provided, That a copy of this order be served upon said William G. McAdoo, Secretary of the Treasury, and upon said John Burke, Treasurer of the United States, and each of them, on or before the 15th day of March, A. D. 1916.

WALTER I. McCOY, *Justice.*

Marshal's Return.

Served a copy of the within order on W. G. McAdoo, by personal service on Byron R. Newton, Acting Sec't'y—March 11, 1916. On John Burke, personally March 11, 1916.

MAURICE SPLAIN, *Marshal.*

10 *Answer of William G. McAdoo and John Burke.*

Filed April 7, 1916.

* * * * * * *

The defendants, William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, reserving to them-

'selves the benefit of all manner of objection and exception to the errors and insufficiencies of the bill of complaint herein and to the jurisdiction of the Court in the premises, nevertheless, answering so much and such parts of the bill of complaint and the rule to show cause herein as they are advised it is material or necessary for them to make answer unto, say as follows:

One. They admit, upon information and belief, the allegations in the first paragraph of the bill of complaint.

Two. They admit, upon information and belief, the allegations in the first clause of the second paragraph of the bill of complaint. As to the second clause of the second paragraph of the bill of complaint, the defendant, William G. McAdoo, admits that he is the Secretary of the Treasury and is sued herein in that capacity. As to the third clause of the second paragraph of the bill of complaint, the defendant, John Burke, admits that he is the Treasurer of the United States and is sued herein in that capacity. .

Three and Four. As to the allegations in the third and fourth paragraphs of the bill of complaint, these defendants say they neither admit nor deny, but so far as the same may be material, require strict proof thereof.

Five. As to the allegations in the fifth paragraph of the bill
11 of complaint, these defendants say that they are advised that by a provision in the Act of Congress approved March 4, 1915 (Public—No. 289, 63d Congress), there was appropriated to one Susan Sanders, only surviving heir of Ebbie Love, deceased, of Vinita, Oklahoma, the sum of twelve hundred dollars ($1,200).

Six. As to the allegations in the sixth paragraph of the bill of complaint, these defendants say that they have no reliable information concerning the said allegations, and, therefore, neither admit nor deny, but so far as the same may be material, require strict proof thereof.

Seven. As to the allegations in the seventh paragraph of the bill of complaint, these defendants say that they have no reliable information concerning the said allegations, and, therefore, neither admit nor deny, but so far as the same may be material, require strict proof thereof.

Eight. As to the allegations in the eighth paragraph of the bill of complaint, these defendants say that the allegations therein set forth matters and things concerning which these defendants have no knowledge, and they are, therefore, unable to make any answer thereto.

Nine. As to the allegations in the ninth paragraph of the bill of complaint, these defendants say that there is now in the Treasury Department a settlement certificate, numbered 115,519, in amount, twelve hundred dollars ($1,200), drawn in favor of Susan Sanders, but these defendants deny that the United States will pay over to the said Susan Sanders, defendant herein, the said sum of twelve hundred dollars ($1,200), or any part thereof, unless restrained by this Honorable Court, but, on the contrary, these defendants say that,
12 as a matter of comity, and out of deference to this Honorable Court, said sum will be retained under the control of these defendants, to await the final disposition of this cause.

Ten. As to the allegation in the tenth paragraph of the bill of complaint, these defendants say that the matter therein alleged is a conclusion of law, concerning which these defendants are advised that they are not called upon to answer.

Further answering the bill of complaint and the rule to show cause, these defendants call attention to the absence of any allegation in the bill of complaint that either the United States or the defendant Susan Sanders have elected to make the sum alleged to be due from the United States payable to the defendant, Susan Sanders, in the District of Columbia, and inasmuch as debts due from the United States have no situs in the District of Columbia, these defendants question whether this Honorable Court has jurisdiction to pass any order or decree herein which will protect the United States in the absence of personal service upon the defendant, Susan Sanders. And these defendants claim the benefit of objection for want of jurisdiction to the same extent as if they had pleaded the same specially or had moved to dismiss the bill.

And having fully answered, these defendants pray that the bill of complaint be dismissed and the rule to show cause discharged.

WM. P. MALBURN,
Acting Secretary of the Treasury,
L. B.
W. P. M.
JOHN BURKE,
Treasurer of the United States.

JOHN E. LASKEY,
United States Attorney, D. C.

13 DISTRICT OF COLUMBIA, *To wit:*

I, Wm. P. Malburn, Acting Secretary of the Treasury, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of personal knowledge are true, and those made upon information and belief, I believe to be true.

WM. P. MALBURN.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 6" day of March, 1916.

[SEAL.] WILLIAM J. MARTIN,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *To wit:*

I, John Burke, Treasurer of the United States, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of personal knowledge are true, and those made upon information and belief, I believe to be true.

JOHN BURKE.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 6th day of March, 1916.

[SEAL.] IDA K. WOOLDRIDGE,
Notary Public, D. C.

14 *Answer of Susan Sanders.*

Filed May 10, 1916.

* * * * * * *

The defendant, Susan Sanders, reserving to herself the benefit of all manner of objections and exceptions to errors and insufficiencies of the bill of complaint, and to the jurisdiction of the Court in the premises, nevertheless, answering so much and such parts of the bill of complaint and the rule to show cause herein as she is advised it is material unto, says as follows:

1. She admits allegations in first paragraph of the bill of complaint.

2. As to the second paragraph of the bill of complaint this defendant neither admits nor denies but so far as same may be material requires strict proof.

3. She admits allegations in third paragraph of the bill of complaint.

4. As to the allegations in the fourth paragraph of the bill of complaint this defendant says it is true that she employed the plaintiff, a practicing lawyer, of the District of Columbia, to act as her attorney in prosecuting said claim and that said suit was instituted in the Court of Claims of the United States and that said case was brought to trial in said Court and that on the — day of ——, 1907, a decision was rendered by said Court against this Defendant.

This defendant further answers that said plaintiff having lost her case in the Court of Claims that it became necessary for her to come from Oklahoma to Washington and employ another firm of
15 attorneys, namely, Howe & Wright, of the District of Columbia, to file a motion for a new trial, reinstate the case on the docket, and submit additional evidence.

That on the 9th day of October, 1907, this defendant entered into an agreement with the firm of Howe & Wright, attorneys at law, and practicing in the District of Columbia, to prosecute her said suit in said Court of Claims as evidenced by the contract and power of attorney properly executed.

And for further answer this defendant says that after said case was dismissed that plaintiff ceased to act as her attorney or do any more work in the case, but that before she employed the said firm of Howe & Wright she discharged said plaintiff as her attorney, having first paid to her all expenses incurred, namely, $72.00, and that said plaintiff agreed to retire from the case, and that if the name of the plaintiff remained on the files as attorney of record that it was without the consent or knowledge of this defendant.

That it is true on May 2, 1910, an allowance of $1,200 was

awarded by said Court of Claims of the United States to said defendant, but that said award was secured through the efforts of the firm of said Howe & Wright, her attorneys, and not through any work of the plaintiff.

5. As to the allegations in the fifth paragraph of the bill of complaint this defendant says that it is true said claim remained pending before the Congress of the United States without final action thereon until March 4, 1915.

She further says that through her own personal efforts this
16 item was included in the Act of Congress of March 4, 1915 (38 Stat. L. 962-981), making appropriation for other similar claims.

6. As to the allegation in the sixth paragraph of the bill of complaint this defendant admits as true that about April 28, 1904, the defendant, did agree to pay said plaintiff as attorney fee a sum equal to twenty per cent of any sum which might be collected upon said claim, but for further answer thereto, this defendant claims that after plaintiff lost the case in the said Court of Claims, her contract with plaintiff was annulled and that she discharged said Plaintiff as her counsel and employed the firm of Howe & Wright who secured a new hearing in the Court of Claims and prosecuted the suit to a final determination and for which services she paid the sum of $300.

7. As to the allegations in paragraph seven of complainants' bill.

This defendant denies that the attempt upon her part to have payment of said check of $1,200 made to her is for the purpose of defrauding plaintiff, but that she has already paid the fee to the rightful attorneys in the case, and that plaintiff is not entitled to any part of said amount.

8. As to the allegation in paragraph eight in the bill of complaint.

The defendant for answer denies that plaintiff is entitled to any portion of said claim of $1,200 or that defendant is in any manner trying to defraud the said plaintiff.

9. As to allegations in the ninth paragraph of the bill of complaint.

17 This defendant is not advised, and neither admits nor denies but so far as same may be material requires strict proof.

10. As to the allegations in the tenth paragraph of the bill of complaint.

This defendant says that the matter therein alleged is a conclusion of law which this defendant is advised that she is not called upon to answer.

Now having fully answered this defendant prays that the bill of complaint be dismissed and the rule to show cause discharged.

her
SUSAN X SANDERS, *Defendant.*
mark

I. C. FOSTER,
Attorney for Defendant.

I, Susan Sanders, do solemnly swear that I read the foregoing answer by me subscribed and know the contents thereof, that the statements therein made as of personal knowledge are true.

her
SUSAN X SANDERS.
mark

Witness:
PEARL YERBY.
I. C. FOSTER.

Subscribed and sworn to before me this 8th day of May, 1916.
[SEAL.] HELEN V. BRIDGE,
Notary Public in and for the District of Columbia.

My Commission Expires Aug. 1, 1920.

18 *Decree.*

Filed February 9, 1917.

* * * * * * *

This cause coming on to be heard at this term upon the pleadings, and after hearing the evidence presented on behalf of the plaintiff and the defendant in interest, Susan Sanders, and the arguments of counsel thereon; and it appearing to the Court that Susan Sanders was, at the time of making the contract sued upon, a citizen of the United States and as such competent to enter into a valid contract without the consent of the Indian Bureau; that plaintiff performed services under said contract for which she is entitled to be paid the sum of ninety dollars ($90), wherefore, it is this 9th day of February, A. D. 1917,

Adjudged, ordered and decreed, that the defendant Susan Sanders pay to the said Belva A. Lockwood, through her attorney of record, the sum of ninety dollars ($90).

It is further adjudged, ordered and decreed, that the defendant Susan Sanders pay the court costs incident to this suit.

It is further adjudged, ordered and decreed, that D. Edward Clarke, of Washington, D. C., be, and he is hereby appointed receiver, with authority, upon giving bond with surety to be approved by the court, in the penalty of fifteen hundred dollars, to demand, collect and receive from William G. McAdoo, Secretary of the Treasury, the sum of Twelve hundred dollars ($1,200), now held in the Treasury of the United States to the credit of Susan Sanders, represented by settlement certificate numbered 115,519, being
19 the amount appropriated by Congress in payment of an adjudication by the Court of Claims in favor of Susan Sanders against the United States, and hold the same pending the further order of the Court.

It is further ordered, that the defendant, William G. McAdoo, Secretary of the Treasury, be and he is hereby authorized and

directed to pay to said Receiver appointed herein, the sum of Twelve hundrd dollars ($1,200), being the amount now held by the United States to the credit of said Susan Sanders upon a claim adjudicated in her favor by the Court of Claims and appropriated for by Congress, and the receipt of said Receiver herein appointed for said amount shall be full acquittance to the United States for any and all claims and demands, either at law or in equity, of the parties hereto arising out of or in anywise connected with said claim.

It is further ordered that upon payment of said sum by the defendant, William G. McAdoo, Secretary of the Treasury, to said Receiver, as aforesaid, and as herein provided, that this suit shall be and the same is hereby dismissed as to said defendant, William G. McAdoo, Secretary of the Treasury, and as to defendant, John Burke, Treasurer of the United States, without costs to said defendants.

WILLIAM HITZ, *Justice.*

20 *Order to Note Appeal and to Issue Citation to Plaintiff.*

Filed March 3, 1917.

* * * * * * *

The Clerk of said Court will note an appeal by the defendants, William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, to the Court of Appeals of the District of Columbia from the final decree entered in this cause on February 9, 1917, and issue citation to the plaintiff, Belva A. Lockwood.

JOHN E. LASKEY,
Per V.,
United States Attorney in and for the District of Columbia,
Attorney for Defendants McAdoo and Burke.

21 In the Supreme Court of the District of Columbia.

No. 34168. In Equity.

BELVA A. LOCKWOOD, Plaintiff,

vs.

SUSAN SANDERS, WILLIAM G. MCADOO, Secretary of the Treasury, and John Burke, Treasurer of the United States, Defendants.

The President of the United States to Belva A. Lockwood, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the

cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal from a final decree of the Supreme Court of the District of Columbia, entered on the 9th day of February, 1917, wherein William G. McAdoo, Secretary of the Treasury and John Burke, Treasurer of the United States, are Appellants, and you are Appellee, to show cause, if any there be, why the Decree rendered against the said Appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. Harry Covington, Chief Justice of the Supreme Court of the District of Columbia, this third day of March in the year of our Lord one thousand nine hundred and seventeen.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clerk.

Service of the above Citation accepted this 3d day of March, 1917.

MARY O'TOOLE,
Attorney for Appellee.

[Endorsed:] No. 34168. Equity. Lockwood vs. Sanders et al. Citation. Issued Mch. 3, 1917. Served cop- of the within Citation on —— ——. —— ——, Marshal. —— ——, Attorney for Appellant.

22

Assignment of Errors.

Filed March 19, 1917.

* * * * * * *

The trial court erred as follows:

One. In holding that the situs of the fund in the plaintiff's bill described, and as to a portion of which fund the plaintiff claims an equitable lien, is within the jurisdiction of the court.

Two. In refusing to hold that the situs of the fund in the plaintiff's bill described is not within the jurisdiction of the court.

Three. In holding that the court had jurisdiction to restrain the action of the defendants McAdoo and Burke, as Secretary of the Treasury, and Treasurer of the United States, respectively, in disbursing the fund described in the plaintiff's bill of complaint.

Four. In refusing to hold that the court was without jurisdiction to restrain the action of the defendants McAdoo and Burke, as Secretary of the Treasury, and Treasurer of the United States, respectively, in disbursing the fund described in the plaintiff's bill of complaint.

Five. In not holding that upon the face of the plaintiff's bill the defendants McAdoo and Burke have no individual interest in the controversy between the plaintiff and the defendant Susan Sanders, and that the relief sought against defendants McAdoo and Burke is in their official capacity only, as representatives of the Government

of the United States, which alone is to be affected by any de-
28 cree sought therein, whereby the said suit is essentially and substantially a suit against the United States and beyond the jurisdiction of the court.

Six. In not holding that the plaintiff's suit is in effect one against the United States, and, therefore, beyond the jurisdiction of the court.

Seven. In requiring the defendant McAdoo, as Secretary of the Treasury, to pay to D. Edward Clarke, receiver, appointed by the final decree, the sum of Twelve hundred dollars ($1,200), and further erred in decreeing that the plaintiff is entitled to recover of defendant Susan Sanders the sum of Ninety dollars ($90) and the costs of the suit.

Eight. In entering the final decree now appealed from.

JOHN E. LASKEY,
Attorney for the United States in and for the District of Columbia, Attorney for Defendants McAdoo and Burke.

Designation of Record on Appeal.

Filed March 19, 1917.

* * * * * * *

The Clerk of the Court will please prepare the transcript of the record in this cause for the Court of Appeals of the District of Columbia, and include therein the following papers of record:

1. Bill of complaint.
2. Rule to show cause against defendants McAdoo and
24 Burke.
3. Answer of defendants McAdoo and Burke.
4. Answer of defendant Susan Sanders.
5. Final decree entered February 9, 1917, appointing D. Edward Clarke, receiver, etc.
6. Appeal of defendants McAdoo and Burke from final decree.
7. Citation to plaintiff.
8. Citation to plaintiff returned, service accepted.
9. Assignment of errors.
10. This designation of record.

JOHN E. LASKEY,
Attorney for the United States in and for the District of Columbia, Attorney for Defendants McAdoo and Burke.

Service of the foregoing designation of record, a carbon copy thereof having been served upon the undersigned, is hereby acknowledged this 17th day of March, 1917.

MARY O'TOOLE,
Attorney for Plaintiff.

25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 34168 in Equity, wherein Belva A. Lockwood is Plaintiff and Susan Sanders, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 28th day of March, 1917.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 3078. William G. McAdoo, &c., et al., appellants, vs. Belva A. Lockwood. Court of Appeals, District of Columbia. Filed Mar. 28, 1917. Henry W. Hodges, clerk.

16 TUESDAY, *October 9th, A. D. 1917.*

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND John Burke, Treasurer of the United States, appellants,
vs.
BELVA A. LOCKWOOD. } No. 3078.

The death of the appellee, and the appointment of De Forest L. Ormes as administrator, in the above-entitled cause, having been suggested, it is, on motion of Miss Mary O'Toole, attorney for the appellee, this day ordered that the said DeForest L. Ormes, administrator of the estate of Belva A. Lockwood, deceased, be, and he is hereby, made the party appellee in this cause in the place and stead of the said Belva A. Lockwood, deceased.

17 THURSDAY, *January 10th, A. D. 1918.*

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND John Burke, Treasurer of the United States, appellants,
vs.
DEFOREST L. ORMES, ADMINISTRATOR OF THE ESTATE OF Belva A. Lockwood, deceased. } No. 3078.

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Messrs. J. E. Laskey and M. C. Van Fleet, attorneys for the appellants, and by Miss Mary O'Toole, attorney for the appellee.

18 WILLIAM G. McADOO, SECRETARY OF THE TREASURY, and John Burke, Treasurer of the United States, Appellants,
v.
DEFOREST L. ORMES, ADMINISTRATOR OF THE ESTATE of Belva A. Lockwood, Deceased, Appellee. } No. 3078.

Opinion.

Mr. Justice VAN ORSDEL delivered the opinion of the court:

Mrs. Belva A. Lockwood brought a suit in equity in the Supreme Court of the District of Columbia to establish an equitable lien for attorney's fees upon a fund of $1,200 in the Treasury of the United States appropriated by Congress (38 Stats. L., 962, 981), to pay a judgment of the Court of Claims in favor of one Susan Sanders. Injunction was prayed against defendant Sanders to restrain her from demanding or receiving the fund, and against defendants McAdoo and Burke, as Secretary of the Treasury and Treasurer of the United States, respectively, from paying out the fund. Plaintiff also prayed the appointment of a receiver to demand and receive

the fund and a decree against defendant Sanders for the amount of her claim.

Defendant Sanders voluntarily appeared and answered, denying that she was indebted to plaintiff. Defendants McAdoo and Burke answered admitting the existence of the fund in the Treasury, and assuring the court that the fund would be retained to await the final disposition of the cause. They, however, objected to the jurisdiction of the court on the ground that debts due from the United States have no situs in the District of Columbia, and that the bill failed to state that the United States or defendant Sanders elected to make the fund payable in the District of Columbia.

This appeal was taken from a decree in favor of plaintiff, the terms of which are not material to the consideration of the questions involved, since only defendants McAdoo and Burke have appealed, defendant Sanders having elected to abide by the order of the court below.

It is contended by the appellants that this action is in effect a suit against the United States, and, the Government not having consented to be sued, the court was without jurisdiction. It is well settled in this jurisdiction that, where money has been appropriated by Congress to satisfy a finding of the Court of Claims, the officials of the Treasury Department are charged with the ministerial duty of making payment upon demand of the person in whose favor the appropriation has been made, and they may be compelled to make payment by mandamus; or a court of equity, with jurisdiction to appoint a receiver of the fund and control its disposition, may compel its delivery through a mandatory writ of injunction. Sanborn v. Maxwell, 18 App. D. C., 245; Roberts v. Consaul, 24 App. D. C., 551; John v. Rutherford, 26 App. D. C., 114; Bryan v. Curtis, 26 App. D. C., 95. In the Consaul case, the court, considering the exact question here under consideration, said: "Assuming, as we must for the purposes of the present appeal, that the court below had jurisdiction of the subject-matter, we have no doubt of its jurisdiction to control the action of the appellant, notwithstanding his official capacity, in respect of the payment of the fund. The suit is in no sense against the United States. The money having been appropriated and directed to be paid to the claimant, they have no interest in the controversy. By the act of the appropriation the appellant, as Treasurer of the United States, is charged with the plain, ministerial duty of making immediate payment upon the demand of the person specified therein. If unrestrained by the order of a court having jurisdiction in the premises, he should refuse to make the payment to the claimant a court of law would compel him to do so by writ of mandamus. Roberts v. United States, 13 App. D. C., 38, 176 U. S., 221, 231. For the same reason a court of equity, having jurisdiction to appoint a receiver of the fund and to control its disposition, may compel its delivery through a mandatory writ of injunction."

The exact question here involved, so far as our investigation goes, has not been passed upon by the Supreme Court of the United States, but the court has, in many cases and under a variety of conditions, defined when a suit against an officer of the United States is a suit against the United States itself. The single conclusion reached in all the cases is that a suit against officers of a State is a suit against the State itself when the relief asked will operate as a judgment against the State. In re Ayers, 123 U. S., 443; Minnesota v. Hitchcock, 185 U. S., 373. However, it by no means follows that every suit against an officer is a suit against the State. In the Ayers case, after holding that the suit was against the United States, the court was careful to insert the following qualification: "But this is not intended in any way to impinge upon the principle which justifies suit . . . against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest." A similar qualification was also announced in the Hitchcock case, where the court said: "Of course, this statement has no reference to and does not include those cases in which officers of the United States are sued, in appropriate form, to compel them to perform some ministerial duty imposed upon them by law, and which they wrongfully neglect or refuse to perform. Such suits would not be deemed suits against the United States within the rule that the Government can not be sued except by its consent, nor within the rule established in the Ayers case."

This seemingly broad rule has been enlarged where injunctions have been upheld against Government officers in cases where neither the refusal to perform a plain official duty nor the threatened violation of such a duty was involved. In Philadelphia Co. v. Stimson, 223 U. S., 605, injunction was upheld to restrain the Secretary of War from including within harbor lines portions of the shore over which the United States had no control. The rule was there stated as follows: "If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. Little v. Barreme, 2 Cranch, 170; United States v. Lee, 106 U. S., 196, 220, 221; Belknap v. Schild, 161 U. S., 10, 18; Tindal v. Wesley, 167 U. S., 204; Scranton v. Wheeler, 179 U. S., 141, 152. And
19 in case of an injury threatened by his illegal action, the officer can not claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. Osborne v. Bank of United States, 9 Wheat., 738, 843, 868; Davis v. Gray, 16 Wall.,

203; Pennoyer v. McConnaughy, 140 U. S., 1, 10; Scott v. Donald, 165 U. S., 107, 112; Smyth v. Ames, 169 U. S., 466; Ex parte Young, 209 U. S., 123, 159, 160; Ludwig v. Western Union Telegraph Co., 216 U. S., 146; Herndon v. C. R. I. & P. Ry. Co., 218 U. S., 135, 155; Hopkins v. Clemson College, 221 U. S., 636, 643–645. And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred. Noble v. Union River Logging R. R. Co., 147 U. S., 165, 171, 172; School of Magnetic Healing v. McAnnulty, 187 U. S., 94. The complainant did not ask the court to interfere with the official discretion of the Secretary of War, but challenged his authority to do the things of which complaint was made. The suit rests upon the charge of abuse of power, and its merits must be determined accordingly; it is not a suit against the United States."

The cases relied upon by appellants are not here analogous, in that they either are cases involving attempts to control the exercise of discretion reposed in the official by law, or cases involving rival administration. In United States v. Borcherling, 185 U. S., 223, an antecedent receiver in New Jersey, the domicile of the claimant, was held entitled to receive the proceeds of an appropriation as against a receiver subsequently appointed in the District of Columbia. In Wyman v. Halstead, 109 U. S., 654, the conflict arose between administrators of deceased claimants in Tennessee and an administrator appointed in the District of Columbia. The administrator in the District of Columbia held the three drafts of the Government issued in payment of the claims appropriated for by Congress. The Treasurer refused to pay the drafts without the indorsement of the Tennessee administrators, but the court does not seem to have regarded this as essential to give a valid acquittance. The decision turned upon the ground that "The United States having, in the phrase of Mr. Justice Story, 'an ubiquity throughout the Union,' may in their discretion, exercised through the appropriate officers, pay a debt, due to the estate of a deceased person, either to the administrator appointed in the State of his domicile, or to an ancillary administrator duly appointed in the District of Columbia; and the exercise of their discretion in this regard can not be controlled by writ of mandamus."

The court, in the course of its opinion in Jones *v.* Rutherford, supra, distinguishing the cases of Vaughan v. Northup, 15 Pet., 1; United States Use of Mackey v. Coxe, 18 How., 100, and Wyman v. Halstead, supra, cited at length and relied upon by appellants, said: "These are all plainly cases of rival administrations, wherein it was held that administration at the place of death of the deceased person was the proper and paramount administration which the Treasury officials should recognize, and that, in antagonism to such administration, there was no room at the seat of Government for a rival, or a different, administration by reason of any supposed situs of assets in this District."

In the present case, no such issue is involved. It is not disputed, and, indeed, it can not be, that the receiver has the right and power to execute a valid acquittance to the United States, nor is it contended that the United States is more than a mere disinterested stakeholder in this whole controversy. The dispute here is between the administrator of plaintiff Lockwood and defendant Sanders. No demand, so far as this record discloses, was ever made by Sanders upon appellants to pay her the sum appropriated at her domicile in the State of Oklahoma. On the contrary, she voluntarily came into the District of Columbia and submitted herself to the jurisdiction of the courts, and by her failure to appeal has sanctioned the order of the court directing payment to the receiver. It follows that obedience to the order of the court can in no way prejudice the rights of the Government. Nor is the judgment one against the United States, but merely against its officials to require the performance of a ministerial act.

The remaining contention of appellants is that debts due from the Government of the United States have no situs at the seat of Government. It would be a strange rule that no debt due from the United States could have a situs in the District of Columbia. Why discriminate against the District of Columbia in favor of the balance of the Union? True, as said by Mr. Justice Story in Vaughan v. Northup, supra: "The debts due from the Government of the United States have no locality at the seat of Government. The United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile." This is equivalent merely to a declaration that debts due from the Government have not an exclusive situs or locality at the seat of Government. The sovereign power of the United States extends to all parts of the Union, and when jurisdiction of the subject matter and the parties concur in the District of Columbia, the courts possess the same jurisdiction as do the Federal courts under like circumstances in any State of the Union. It merely means that the domicile of the United States, in their sovereign capacity, being coextensive with the Union, is not confined to the National Capital by reason of the fact that the Treasury, where the financial affairs of the Government are transacted, and where its obligations are payable, is located here.

But the question before us may be readily disposed of when applied to the present case. Defendant Sanders, a nonresident of the District of Columbia, without waiting for service by publication under section 105 of the District Code, voluntarily appeared and answered the bill without objection to the jurisdiction of the court. The question of whether the fund due her from the United States was "property within the District," within the meaning of section 105, is not material. It is a settled rule of the Federal courts that a general appearance by a defendant waives the objection that

he has been sued in a State or District where he does not re-
20 side, and confers jurisdiction of the person to the same extent as if he were a resident of the State or District and had been duly served with process. Toland v. Sprague, 12 Pet., 300; Bank v. Morgan, 132 U. S., 141; Railway Co. v. Cox, 145 U. S., 593. It would seem, therefore, in the light of these decisions, that it is immaterial whether defendant Sanders did or did not have property in the District of Columbia, or whether the fund in controversy had or had not a situs here. Since the real party in interest, the nonresident defendant, waived objection to the jurisdiction and elected to abide by the decree, appellants are not in position to object for her. No claim is made here that the fund in question has a situs in Oklahoma or in any other place outside of this jurisdiction. It must, therefore, be property in the District of Columbia.

The contentions of appellants are wholly without merit. The Government is a disinterested party—a mere stakeholder—and appellants are charged only with the ministerial duty of obeying the order of the court, which furnishes a complete acquittance. Just why this appeal should have been prosecuted by appellants, after the real party in interest had concurred in the decree and abandoned the suit, is not apparent, since the United States can not be either a winner or loser from the judgment, whatever it may be.

The decree is affirmed with costs.

Affirmed.

21 MONDAY *February 4th, A. D. 1918.*

WILLIAM G. McADOO, SECRETARY OF THE Treasury, and John Burke, Treasurer of the United States, Appellants, *vs.* DEFOREST L. ORMES, ADMINISTRATOR OF THE estate of Belva A. Lockwood, deceased.	No. 3078. January term, 1918.

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be and the same is hereby affirmed with costs.

PER MR. JUSTICE VAN ORSDEL.

FEBRUARY 4, 1918.

22 In the Court of Appeals of the District of Columbia.

January term, 1918.

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND John Burke, Treasurer of the United States, Appellants, vs. DE FOREST L. ORMES, ADMINISTRATOR OF THE ESTATE OF Belva A. Lockwood, deceased, Appellee.	No. 3078.

Petition for appeal.

Now, come the said William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, and say that in the rendition of the judgment of the court here, affirming the judgment of the Supreme Court of the District of Columbia herein, error has intervened to their prejudice, as well as in the rendition of the said judgment in the Supreme Court of the District of Columbia.

Wherefore they pray an appeal in this behalf to the Supreme Court of the United States for the correction of the errors aforesaid, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States in accordance with law.

The petitioners show to your honors:

1. That in this case the jurisdiction of the Supreme Court of the District of Columbia is drawn in question.

23 2. The scope of a power of officers of the United States is drawn in question.

3. The construction of a law of the United States is drawn in question.

WILLIAM G. McADOO,
Secretary of the Treasury.
JOHN BURKE,
Treasurer of the United States.
(Signed) JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia, Attorney.

(Endorsed:) No. 3078. William G. McAdoo, &c., et al., Appellants, vs. DeForest L. Ormes &c. Petition for appeal. Court of Appeals, District of Columbia. Filed Feb. 26, 1918. Henry W. Hodges, clerk.

24 In the Court of Appeals of the District of Columbia.

January term, 1918.

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND John Burke, Treasurer of the United States, Appellants,
v.
DE FOREST L. ORMES, ADMINISTRATOR OF THE ESTATE OF Belva A. Lockwood, deceased, Appellee.
No. 3078.

Assignment of errors.

Now come the said William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, and make the following assignment of errors in the above entitled cause:

The Court of Appeals erred:

1. In affirming the judgment of the court below.

2. In deciding that the situs of the fund was within the jurisdiction of the court.

3. In refusing to decide that the situs of the fund was not within the jurisdiction of the court.

4. In deciding that the court had jurisdiction to restrain the action of said William G. McAdoo and John Burke, as Secretary of the Treasury and Treasurer of the United States, respectively, in disbursing the fund.

25 5. In refusing to decide that the court was without jurisdiction to restrain the action of the said William G. McAdoo and John Burke, as Secretary of the Treasury and Treasurer of the United States, respectively, in disbursing the fund.

6. In deciding that the suit is not one against the United States.

(Signed) JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia; Attorney for William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States.

(Endorsed:) No. 3078. William G. McAdoo, &c., et al., appellants, vs. DeForest L. Ormes, &c. Assignment of errors. Court of Appeals, District of Columbia. Filed Feb. 26, 1918. Henry W. Hodges, clerk.

26 TUESDAY, *February 26th, A. D. 1918.*

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND John Burke, Treasurer of the United States, Appellants,
vs.
DEFOREST L. ORMES, ADMINISTRATOR OF THE ESTATE OF Belva A. Lockwood, deceased.
No. 3078.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above-entitled cause, It is by the court this day ordered that said appeal be and the same is hereby allowed.

27 UNITED STATES OF AMERICA, ss:

To DeForest L. Ormes, administrator of the estate of Belva A. Lockwood, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 26th day of February, in the year of our Lord one thousand nine hundred and eighteen.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged Feb. 27, 1918.

MARY O'TOOLE,
Counsel for Appellee.

28 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 27, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, appellants, vs. DeForest L. Ormes, administrator of the estate of Belva A. Lockwood, deceased, No. 3078, January term, 1918, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of February, A. D. 1918.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

(Endorsement on cover:) File No. 26445. District of Columbia Court of Appeals. Term No. 86. William G. McAdoo, Secretary of the Treasury, and John Burke, Treasurer of the United States, Appellants, vs. DeForest L. Ormes, administrator of the estate of Belva A. Lockwood, deceased. Filed April 16th, 1918. File No. 26,445.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

WILLIAM G. McADOO, SECRETARY OF the Treasury, and John Burke, Treasurer of the United States, appellants,
v.
DE FOREST L. ORMES, ADMINISTRATOR of the estate of Belva A. Lockwood, deceased.
No. 86.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION TO SUBSTITUTE AS ONE OF THE APPELLANTS CARTER GLASS, PRESENT SECRETARY OF THE TREASURY, IN THE PLACE OF WILLIAM G. McADOO, FORMER SECRETARY THEREOF.

Comes now the Solicitor General, and suggesting to the court the resignation of William G. McAdoo as Secretary of the Treasury and the appointment of Carter Glass as his successor, respectfully moves the court that said Carter Glass be made a party appellant in the case in the place and stead of said William G. McAdoo as of December 16, 1918.

This is a suit to establish an equitable lien for attorney's fees upon a fund of $1,200 appropriated

by Congress in satisfaction of a judgment of the Court of Claims in favor of one Susan Sanders. The appeal is taken from a decision of the Court of Appeals of the District of Columbia affirming a decree directing the payment of said fund to a receiver appointed by the court.

In order to prevent abatement of the suit as to the Secretary of the Treasury, in view of the fact that it involved said McAdoo solely in his official capacity, and to permit the appellants to present to this honorable court the questions involved on the appeal, it is respectfully requested that the substitution moved be granted.

ALEX. C. KING,
Solicitor General.

OCTOBER, 1919.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

CARTER GLASS, SECRETARY OF THE TREASURY, and John Burke, Treasurer of the United States, appellants,

v.

DE FOREST L. ORMES, ADMINISTRATOR OF the Estate of Belva A. Lockwood, deceased.

No. 86.

ON APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION TO SUBSTITUTE AS ONE OF THE APPELLANTS DAVID F. HOUSTON, PRESENT SECRETARY OF THE TREASURY, IN THE PLACE OF CARTER GLASS, FORMER SECRETARY THEREOF.

Comes now the Solicitor General, and suggesting to the court the resignation of Carter Glass as Secretary of the Treasury and the appointment of David F. Houston as his successor, respectfully moves the court that said David F. Houston be made a party appellant in the case in the place and stead of said Carter Glass as of February 2, 1920.

This is a suit to establish an equitable lien for attorney's fees upon a fund of $1,200 appropriated by Congress in satisfaction of a judgment of the

Court of Claims in favor of one Susan Sanders. The appeal herein, which was argued before this court on January 23, 1920, is taken from a decision of the Court of Appeals of the District of Columbia affirming a decree directing the payment of said fund to a receiver appointed by the court.

In order to prevent abatement of the appeal as to the Secretary of the Treasury, in view of the fact that said Glass was involved therein solely in his official capacity, it is respectfully requested that the substitution moved be granted.

ALEX. C. KING,
Solicitor General.

MARCH, 1920.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

CARTER GLASS, SECRETARY OF THE TREASURY, and John Burke, Treasurer of the United States, appellants,

v.

DE FORREST L. ORMES, ADMINISTRATOR of the estate of Belva Lockwood, deceased.

No. 86.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLANTS.

STATEMENT OF THE CASE.

This is a suit in equity begun by Belva Lockwood and continued by her administrator against Susan Sanders, a resident of Oklahoma, the Secretary of the Treasury, and the Treasurer of the United States to control the payment, receipt, and distribution of a sum of money appropriated by Congress in satisfaction of a claim against the United States.

Briefly, it is alleged that the plaintiff was retained by the defendant Sanders to prosecute a claim against the United States; the said defendant

by written contract had agreed to pay the plaintiff a fee equal to 20 per cent of the amount recovered; and that said claim had been prosecuted to judgment in the Court of Claims and an appropriation in satisfaction thereof made by Congress. (Bill of complaint, Rec. 1–5.)

It is further alleged that the defendant Sanders has refused to pay plaintiff the agreed fee; that it is the intention of said defendant to defraud the plaintiff of said fee, and to remove the fund so appropriated from the jurisdiction of the court; and that the officers of the Treasury Department, unless restrained, will issue a Treasury warrant for the full amount of said appropriation to the defendant Sanders.

The bill prayed that the defendant Sanders be enjoined from applying for, demanding, or receiving the amount of said warrant; that the Secretary of the Treasury and the Treasurer of the United States be enjoined from issuing to the defendant Sanders the amount of said warrant; that a receiver be appointed to demand and receive said amount, and that the plaintiff recover a sum equal to 20 per cent thereof.

The defendant Sanders voluntarily appeared and answered, denying that she was indebted to the plaintiff. (Rec. 9–10.) The Secretary of the Treasury and Treasurer of the United States answered admitting that they held a settlement certificate in the amount of $1,200 drawn in favor of Susan Sanders, and stating that, as a matter of comity, said certificate would be retained to await the final disposition of the case. They, however, objected to the

jurisdiction of the court on the ground that debts due from the United States have no situs in the District of Columbia. (Rec. 6–8.)

The Supreme Court of the District of Columbia entered a decree adjudging that the defendant Sanders is indebted to the plaintiff in the sum of $90; appointing a receiver to collect the fund in question; authorizing and directing the Secretary of the Treasury to pay said fund to said receiver; and providing that upon the payment of said sum to said receiver the suit should be dismissed as to said officers. (Rec. 11–12.) The defendants McAdoo (now Glass) and Burke carried the case to the Court of Appeals of the District where the decree was affirmed. (Rec. 17–22; 47 D. C. App. 364.)

This case, while involving a small amount, is one of many similar controversies involving the officers of the Treasury Department and therefore is important as a precedent.

SPECIFICATION OF ERROR.

The Court of Appeals erred:

1. In deciding that the situs of the fund was within the jurisdiction of the court.

2. In deciding that the court had jurisdiction to restrain the action of the Secretary of the Treasury and the Treasurer of the United States, respectively, in disbursing the fund.

3. In deciding that the suit is not one against the United States.

ARGUMENT.

I.

The Secretary of the Treasury and the Treasurer of the United States hold said fund solely in their official capacity. The suit is, therefore, in effect a suit against the United States.

The present case is a suit to enjoin the Secretary of the Treasury and the Treasurer of the United States from issuing a warrant to the person and in the amount directed by the act of Congress.

The situation of appellants is not, as stated by the Court of Appeals, that of mere stakeholders. They are sued in their official capacity as officers of the Government. Their action, which is sought to be controlled, is their action as such officers and not as private individuals. They have a duty to perform, to wit, to pay a debt due by the United States in accordance with the command of Congress.

The suit is in effect one against the United States. The issues can not be disposed of without affecting the money of the United States in the Treasury. Although appropriated by Congress for the benefit of the defendant Sanders, it is still money of the United States until paid out of the Treasury.

The test whether or not a suit is one against the United States or against an officer as an individual depends upon the nature of the decree to be entered. If the decree would control the action of the officer outside the scope of his authority, the interest of the Government would not be involved and the suit would be one against the individual. *Philadelphia Company* v. *Stimson*, 223 U. S. 605, 620. But if

the decree would control the action of the officer within the scope of his authority, or interfere with the United States in the use of its property or performance of its functions, the suit would be one against the United States. *Wells* v. *Roper*, 246 U. S. 335, 337.

In the case at bar it is sought to enjoin these Government officers from discharging an official duty devolved upon them by statute. The payment of the fund in question to the defendant, Sanders, is a ministerial duty, the performance of which could be compelled by mandamus. *Parish* v. *MacVeagh*, 214 U. S. 124. This conclusively establishes the character of the suit as one to control the official action of the appellants.

Moreover, the suit is an attempt to control the property of the United States in the hands of these officials. That this can not be done is made clear by a case relating to an infringement of a patent by Federal officials. There an officer of the United States Navy on behalf of the Government was using without authority a patented article. This court held that while he was liable in damages to the owner of the patent, he could not be enjoined from using the patented article in the future; for the effect of such an injunction would be to deprive the Government of the use of its property in a suit to which it was not a party. *Belknap* v. *Schild*, 161 U. S. 10.

By a parity of reasoning a mandamus will not lie against the Secretary of the Navy to compel him to surrender an abandoned cruiser which has been sold

to the plaintiff. *Goldberg* v. *Daniels*, 221 U. S. 218. Mr. Justice Holmes, after setting forth the decision of the lower court which had held that the petitioner was not entitled to possession of the vessel and had therefore dismissed the suit on the merits, said:

> We see no sufficient reason for throwing doubt upon this premise for the decision, but there is another that comes earlier in point of logic. The United States is the owner in possession of the vessel. It can not be interferred with behind its back, and as it can not be made a party this suit must fail. (231 U. S. 221–222.)

The fundamentally important question presented by the case at bar is whether high officials of the Government, acting wholly within the scope of their authority, may be sued in proceedings of this kind. If so, officials of the Treasury Department will be subject to be sued by creditors of the successful claimant whenever an appropriation is made in satisfaction of a claim against the United States, and will be greatly hampered in the discharge of their official duties. This, it is submitted, would be contrary to public policy. *Morgan* v. *Rust*, 100 Ga. 346, and cases cited.

II.

Debts due from the United States have no situs at the seat of Government. This has been many times decided.

Provision for the payment of the claim of the defendant, Susan Sanders, was made in the omnibus claims act of March 4, 1915 (38 Stat. L., 962, 981), as follows:

To Susan Sanders, only surviving heir of Ebbie Love, deceased, of Vinita, $1,200.

This appropriation, which is made payable "out of any money in the Treasury not otherwise appropriated," segregates no special fund from the general funds of the Government. The situation simply is that there is a debt due from the Government to a resident of Vinita, Okla., and this debt, it is contended, has no situs in the District of Columbia which would warrant a proceeding by publication.

In *Vaughan* v. *Northup*, 15 Pet. 1, it appeared that Northup obtained letters of administration in the proper court of Jefferson County, Ky., upon the estate of one Moody, an inhabitant of the State, and in virtue of said letters received from the Treasury of the United States the sum of $5,215.56, due the intestate for military services. A bill in equity was filed in the District of Columbia, by persons claiming to be next of kin, for their distributive shares of the fund. The lower court dismissed the bill for want of jurisdiction, and its action was by this court affirmed. Speaking through Mr. Justice Story, the court said:

> But it has been suggested that the present case is distinguishable, because the assets sought to be distributed were not collected in Kentucky, but were received as a debt due from the Government at the Treasury Department at Washington, and so constituted

local assets within this district. We can not yield our assent to the correctness of this argument. *The debts due from the Government of the United States have no locality at the seat of government. The United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile.* On the contrary, the administrator of a creditor of the Government, duly appointed in the State where he was domiciled at his death, has full authority to receive payment, and give a full discharge of the debt due to his intestate, in any place where the Government may choose to pay it; whether it be at the seat of Government, or at any other place where the public funds are deposited. If any other doctrine were recognized, the consequence would be that before the personal representative of any deceased creditor, belonging to any State in the Union, would be entitled to receive payment of any debt due by the Government, he would be compellable to take out letters of administration in this district for the due administration of such assets. Such a doctrine has never yet been sanctioned by any practice of the Government, and would be full of public as well as private inconveniences. It has not, in our judgment, any just foundation in the principles of law. (P. 6 *et seq.*) [Italics ours.]

Wyman v. *Halstead*, 109 U. S. 654. In this case Wyman, Treasurer of the United States, acting under authority of an act of Congress making appropriation therefor, issued three drafts payable at the Treasury in Washington to the estates of John J. Pulliam and John N. Pulliam. One Halstead, having the drafts in his possession, applied for and obtained letters of administration in the District of Columbia on said estates. Halstead subsequently indorsed the drafts and demanded payment of Wyman, who refused to pay them without the indorsements of the administrators appointed in Tennessee, the domicile of the decedents. The court in its opinion reaffirmed the principle laid down in *Vaughan* v. *Northup*, *supra*, and followed in *Mackey* v. *Coxe*, 18 How. 100, and proceeded as follows:

> In the case at bar, neither the fact that the drafts were made payable at the Treasury of the United States in the City of Washington, nor the deposit, pursuant to section 307 of the Revised Statutes, of the money represented by the drafts in the Treasury to the credit of the payees, affected the character or the locality of the debts. The deposit of the money gave the payees or their representatives no property in or lien upon it. The obligation of the United States was not to surrender to them any specific sums of money, but to pay them sums equal to the amount credited to them, as in the case of any other liquidated debt. The creditors could not indeed insist upon payment without first demanding it at the Treasury. But the United States, in their

sovereign capacity, having no domicile in any one part of the Union, rather than in any other, do not, by establishing at the National Capital a Treasury for the transaction of the principal business of the financial department of the Government, and making their money obligations payable there, confine their presence or their powers to this spot. The United States having, in the phrase of Mr. Justice Story, "an ubiquity throughout the Union," may in their discretion exercised through the appropriate officers pay a debt due to the estate of a deceased person, either to the administrator appointed in the State of his domicile or to an ancillary administrator duly appointed in the District of Columbia; and the exercise of their discretion in this regard can not be controlled by writ of mandamus. (P. 658 *et seq.*)

See also *Borcherling* v. *United States*, 35 Ct. Clms. 311, affirmed in *United States* v. *Borcherling*, 185 U. S. 223.

CONCLUSION.

It is submitted that the decree in this case should be reversed and the case remanded to the Supreme Court of the District of Columbia with directions to dismiss the bill.

NOVEMBER, 1919.

MORGAN H. BEACH,
Of Counsel.
ALEX. C. KING,
Solicitor General.
A. F. MYERS,
Attorney, Department of Justice.

O

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

CARTER GLASS, Secretary of the Treasury, and JOHN BURKE, Treasurer of the United States, *Appellants*,

vs.

DE FOREST L. ORMES, Administrator of the Estate of BELVA A. LOCKWOOD, Deceased, *Appellee*.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

THE CASE.

The case is fairly stated in appellants' brief.

ARGUMENT.

Appellants assignments of error contain three Points:

1. Is the suit one against the United States?
2. Had the trial court jurisdiction?
3. Had the fund in question a situs within the District of Columbia?

Point I.

Is the Suit One Against the United States?

This Court has many times defined when a suit against an officer of the United States is a suit against the United States Government, and has been careful to differentiate such suits from the one at bar.

For example, in *re Ayers,* 123 U. S., 443, the Court held that the suit was one against the United States and qualified its decision by adding:

> "But this is not intended in any way to impinge upon the principle which justifies suit * * * against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest."

Similarly in *Minnesota v. Hitchcock,* 185 U. S., 373, the Court said, at page 386:

> "Of course, this statement has no reference to and does not include those cases in which officials of the United States are sued in appropriate form to compel them to perform some ministerial duty imposed upon them by law and which they wrongfully neglect and refuse to perform. Such suits would not be deemed suits against the United States within the rule that the Government cannot be sued except by its consent, nor within the rule established in the Ayers case."

So also in *Philadelphia Co. v. Stimson,* 223 U. S., 605, the Court, in granting an injunction to restrain the Secretary of War from including within harbor lines portions of the shore over which the United States had no control, said:

> "If the conduct of the defendants constitutes an unwarrantable interference with property of the complainant, its resort to equity is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. Citing *Little v. Barreme,* 2 Crach. 170; *U. S. v. Lee,* 106 U. S., 196; *Belknap v. Schild,* 161 U. S., 10; *Tindal v. Wesley,* 167 U. S., 204; *Scranton v. Wheeler,* 179 U. S., 141. * * * The suit rests upon the charge of abuse of power and its merits must be determined accordingly; it is not a suit against the United States."

Among the cases cited by counsel for appellants in support of the contention that the case is one against the United States, there is but one which bears analogy to the case at bar, namely: *Parish v. McVeagh,* 214 U. S., 124, the basis of which was that a claim was referred to the Secretary of the Treasury by Act of Congress to determine and ascertain the full amount due claimant and to issue a warrant therefor. The Court held that the amount having been determined petitioner was entitled to a writ of mandamus directing the Secretary of the Treasury to issue his warrant.

Counsel for appellants, in citing *Parish v. McVeagh,* supra, in their brief, p. 5, argue that "The payment of the fund in question to the defendant, Susan San-

ders, is a ministerial duty, the performance of which could be compelled by mandamus."

We submit that no further argument is necessary on this point, for if a mandamus would lie to compel the payment to the defendant, Sanders, by the same token a mandatory writ of injunction will lie directing the payment to the receiver appointed by the trial court and enjoining the payment thereof to the defendant, Sanders, she having submitted to the jurisdiction of the court, accepted its judgment and refused to join in this appeal from its decree. The receipt of the receiver discharges the United States and its officers from all obligation in respect of the fund.

An examination of the other cases cited by counsel for appellants in support of the contention that the suit is one against the United States reveals that they have no analogy the case at bar:

Philadelphia Company v. Stimson, supra, involved the construction and constitutionality of Acts of Congress giving the Secretary of War power to establish harbor lines in navigable waters of the United States, and the validity and effect of the acts of that official thereunder.

In *Wells v. Roper,* 246 U. S., 335, suit was based upon the cancellation of a contract to furnish automobiles for the transportation of the mails within the City of Washington, D. C., with a clause reserving the right to the Postmaster General to cancel the contract upon 90 days' notice.

Belknap v. Schild, 161 U. S. 10, was a suit against army officers to enjoin infringement of a patent.

Goldberg v. Daniels, 221 U. S., 218, arose on a petition for a mandamus to compel the Secretary of the Navy to accept a certified check for the amount of the

highest bid for a condemned cruiser in response to an advertisement asking for sealed proposals.

Morgan v. Rust, 100 Ga., 346, was an attempt to garnish funds in the hands of a county treasurer.

Point II.

Had the Trial Court Jurisdiction?

In a suit in equity by an attorney against a non-resident client and the Treasurer of the United States, to establish an equitable lien upon the fund in the Treasury of the United States, for which a check was about to be issued by the Treasurer, the lien having been created by contract between the attorney and his client, as between the claimant and the Treasurer of the United States the fund has a locality in the District of Columbia; the Treasurer is protected by the receipt of the receiver and the jurisdiction of the fund can only be raised by the non-resident defendant. ***Roberts v. Consaul,*** 24 D. C. App., 551.

In the case at bar the non-resident defendant, Susan Sanders, voluntarily appeared and answered the bill, without alleging lack of jurisdiction because of her non-residence, the suit was tried on its merits and the decree entered is *res adjudicata* as to her, she not having appealed therefrom.

Where money has been appropriated by Congress to pay a finding of the Court of Claims, the Treasurer of the United States is charged with the plain ministerial duty of making immediate payment upon the demand of the person in whose favor the appropriation has been made and he may be compelled to do so by a writ of mandamus; or a court of equity having jurisdiction to appoint a receiver of the fund may compel its de-

livery to such receiver by a mandatory writ of injunction. For the same reason a court of equity, having jurisdiction to appoint a receiver of the fund and control its disposition, may compel its delivery through a writ of mandamus. *Roberts v. Consaul,* supra.

This last cited case is on all fours with the case at bar; the facts establishing the lien on the fund being identical with those upon which the decree appealed from was entered, with the additional jurisdictional fact that the person in whose favor the appropriation was made was in court in person.

The United States being a mere custodian of the fund and since payment thereof to a receiver discharges both the United States and the officers personally from liability therefor, the trial court had jurisdiction. *Borcherling v. United States,* 35 Court of Claims Reports, 311; affirmed in *United States v. Borcherling,* 185 U. S., 223; the Court saying, page 340,

> "The claim of Price therefore was as much an asset in New Jersey as in the District of Columbia, and inasmuch as Price was domiciled in New Jersey, where he was personally served with process, such claim, at least as against the creditors of Price domiciled in the District of Columbia, passed to the receiver by virtue of his appointment, of which appointment such creditors had notice."

If a debt against the United States Government was as much an asset in New Jersey as in the District of Columbia, then by analogy it would also be as much an asset in the District of Columbia as in New Jersey, in a proper case, such as the one before the court. The creditor asserting the lien resided here; the officials of the Treasury were here, the warrant was physically

present here, which facts placed the ~~suits~~ situs or locality of the debt in the District of Columbia as between the appellants and the appellee, besides which appellants co-defendant, the claimant, voluntarily appeared and answered the bill without raising any question of jurisdiction because of her non-residence, thus giving the court jurisdiction of her person as well as of the subject-matter in controversy. In the case quoted from (*Borcherling v. United States*) the appointment of the receiver in New Jersey was prior to the appointment of the receiver in the District of Columbia.

The gravamen of the suit being to establish the lien of the plaintiff, appellee herein, upon the money of the defendant, Susan Sanders, appropriated by Congress in payment of her claim allowed by the Court of Claims, as between the parties to the suit the receiver is entitled to the money in the Treasury due Susan Sanders, *Borcherling v. United States,* supra; the suit being in no sense an attempt to attach funds in the United States Treasury. *Jones v. Rutherford,* 26 App. D. C., 114. Such suits are not suits against the United States. *Minnesota v. Hitchcock,* supra.

In *Price v. Forrest,* 173 U. S., 410, the question was between the heirs of Price and the receiver, Borcherling, and the court held that the title passed under the laws of the State of New Jersey and the decree of its court, from Price and his heirs and vested in the receiver.

From the foregoing it is submitted that it is clear that the court below had jurisdiction to hear and determine the controversy between the plaintiff-appellee, and appellants' co-defendant; to enter the decree appealed from directing, among other things, the Secretary of the Treasury to deliver the warrant to the re-

ceiver appointed by said decree and to pay the amount thereof to said receiver—a plain ministerial duty involving no rights or property of the United States—the receipt of such receiver to be full acquittance of the United States in respect of the fund in question.

Point III.

Had the Fund in Question a Situs Within the District of Columbia?

Debts due from the Government have a situs in the District of Columbia if its courts have jurisdiction of the parties claiming such debts or equitable liens thereon. The situs or locality of such debts is in the District of Columbia as well as elsewhere in the Union. We admit that debts due from the Government have no *exclusive* situs at the seat of Government. The situs must be somewhere and no claim has been made herein that the situs is at a point other than in the District of Columbia. Plaintiff-appellee was a resident of the District of Columbia; the Treasury officials against whom the decree ran were located in the District; the warrant was physically present there and could have been made the subject of larceny there, so that as between appellants and appellee the fund had a situs within the District of Columbia. Add also the further fact that appellants' co-defendant appeared personally in the suit and answered thereto without raising the question of lack of jurisdiction because of her non-residence.

When an appropriation has been made by Congress to pay a finding of the Court of Claims in favor of the claimant, and nothing remains to be done but the issuance by the Treasurer of the Unnted States of a check to the claimant in payment, *the fund has a locality in*

the District of Columbia as between the Treasurer and the claimant, or one having an equitable lien upon the fund created by contract with the claimant. Roberts v. Consaul, 24. D. C. App., 551.

Borcherling v. United States, 35 Court of Claims Reports, 311, affirmed in *United States v. Borcherling,* 185 U. S., 223, cited by counsel for appellants in their brief, held that as against an antecedent receiver appointed by the courts of New Jersey, having jurisdiction of the claimant and his creditors, the fund in question had not a situs in the District of Columbia. But what were the circumstances which placed the situs of the debt in New Jersey? It was the residence of the creditor asserting the lien. The District of Columbia was the residence of the lienor in the present case. New Jersey was also the residence of the claimant or debtor. Appellants' co-defendant, the debtor herein, came into the District of Columbia and gave its courts jurisdiction in respect to the controversy. Those facts, together with the further fact that a debt owed by the United States has an "ubiquity throughout the Union," gave jurisdiction to the courts of New Jersey and placed the situs of the fund in that state in the matter of *Borcherling v. United States,* supra; so, by analogy, the same state of facts in the case at bar, places the situs of the debt owed by the United States in the District of Columbia and gives jurisdiction to its courts. Let us suppose that after the decree appealed from was entered a creditor of Susan Sanders brought suit against her in the State of Missouri and a decree was entered therein appointing a receiver to demand the fund in controversy from the Secretary of the Treasury, priority would have to be given to the

receiver appointed by the decree appealed from under the ruling in *Borcherling v. United States*, supra.

Wyman v. Halstead, 109 U. S., 654; *Vaughan v. Northrup*, 15 Pet. 1, cited by counsel for appellants in their brief and discussed at length therein, involved rival administrations and bear no analogy to the case at bar.

So far as we have been able to discover neither this Honorable Court nor any other has held that debts due from the United States have not a situs or locality in the District of Columbia. A fair reading of the cases involving the question of the situs of such funds and the facts upon which they are based indicates that what the courts have said is in effect that there is no *exclusive* situs or locality of such debts at the seat of Government, but that there is a situs or ubiquity throughout the Union, of which the District of Columbia is a part, and that in a proper case, such funds have a situs in this jurisdiction as well as elsewhere in the Union.

Conclusion.

It is submitted that the decree appealed from should be affirmed.

January, 1920.

Mary O'Toole,
Attorney for De Forest L. Ormes, Administrator of the Estate of Belva A. Lockwood, deceased, Appellee, Hibbs Building, Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 86.

WILLIAM G. McADOO, SECRETARY OF THE TREASURY, AND JOHN BURKE, TREASURER OF THE UNITED STATES, APPELLANTS,

vs.

DE FOREST L. ORMES, ADMINISTRATOR, ETC., APPELLEE.

BRIEF IN SUPPORT OF THE DECREE BELOW.

STATEMENT.

This was a suit in the Supreme Court of the District of Columbia to enforce an alleged equitable interest in or lien upon a fund in the Treasury of the United States. The nominal owner of the fund and the Secretary of the Treasury were made parties defendant to the bill, and an injunction was prayed to restrain the one from collecting, and the other from paying over, the fund. A trial was had and a decree was entered establishing plaintiff's lien, awarding the injunction prayed, and appointing a receiver to collect the fund from the United States and apply so much of it

as might be necessary to the satisfaction of plaintiff's lien. An appeal was taken by the Secretary of the Treasury to the Court of Appeals of the District of Columbia. His principal contentions there were:

1. That a debt due by the United States to a non-resident creditor is not property of such creditor "in the District of Columbia," that will justify publication of process against the non-resident under Section 105 of the District code.

2. That a suit to restrain the Secretary of the Treasury from paying over a fund in the Treasury to the nominal owner and to require payment of such fund to a receiver, is really a suit against the United States and cannot be maintained.

3. That such a suit is, in effect, a garnishment or attachment of funds in the hands of the United States, and cannot, for that reason also, be maintained.

4. That payment of the fund to a receiver cannot be compelled because it is the exclusive privilege of the Comptroller of the Treasury to decide to whom payment of the moneys of the United States shall be made.

The decision of the court below was affirmed and an appeal to this court was allowed (47 App. D. C., 364).

ARGUMENT.

There is no doubt that a bill may be maintained against individuals to establish an equitable interest in or lien upon a fund held by the Undited States in the capacity of a stakeholder; to enjoin collection of such fund by a claimant thereof; and to compel, by the appointment of a receiver, the application of such fund to the satisfaction of the plaintiff's lien. Many instances of such suits are to be found in the reports of the decisions of this court. See among others:

Trist vs. Child, 21 Wall., 441.

Peugh vs. Porter, 112 U. S., 742.

About thirty years ago this court held that the appointment of a receiver of the assets of a defendant in a chancery suit transferred to such receiver, by operation of law, title to a fund in the Treasury of the United States belonging to the defendant, and that payment of such fund to the receiver would operate a full acquittance and discharge of the United States from all claims to the fund.

Price vs. Forrest, 173 U. S., 410.

A few years thereafter, the Secretary of the Treasury having paid over a part of the fund to the defendant instead of the receiver, this court held that the receiver was entitled to recover from the United States in the Court of Claims the amount so paid over by the Secretary to the defendant.

United States vs. Borcherling, 185 U. S., 223.

And this court has held that the head of a department may be compelled by mandamus to pay over money, where he is charged with no official discretion in respect to such payment, and has only to perform the mere ministerial duty of making the payment as required by law.

Roberts vs. United States, 176 U. S., 221.
Parish vs. MacVeagh, 214 U. S., 124.
Smith vs. Jackson, 248 U. S., 388.

As a consequence of these decisions, but more particularly of those which obligate the government to make payment to a duly appointed receiver, it has become a common practice in suits in the District of Columbia for the enforcement of an equitable lien upon or interest in a fund held by the government as a stakeholder, to join the head of the department having control of the fund as a defendant to the bill, and to obtain a preliminary injunction to prevent disposition of the fund by him pending the suit. The argument in

support of this practice has been that if it be the mere ministerial duty of the head of the department to make payment of the fund to a receiver, and if performance of that duty may be compelled by mandamus or mandatory injunction, it follows that an injunction will lie to prevent disposition of the fund pending the suit.

Roberts vs. Consaul, 24 App. D. C., 551.
Lyttle vs. Nat. Surety Co., 43 App. D. C., 136.

This court has decided, also, that the surety on the bond of a government contractor has an equitable lien upon or interest in a retained percentage of the contract price in the hands of the government, which lien or interest relates back to the moment when the surety signed the bond and takes precedence of any claim to the fund by, through, or under, the contractor.

Prairie State Bank vs. United States, 164 U. S., 227.
Henningsen vs. U. S. Fid. & Guaranty Co., 208 U. S., 404.
Hardaway vs. Nat. Surety Co., 211 U. S., 552.

The court is aware that the government every year enters into contracts for the construction of public works, many of which involve an expenditure of a million dollars or more, and that the contractor must give a bond with surety conditioned for the payment of the claims of those who furnish labor and materials for the work. In the larger of these contracts the contractor is, in most cases, little more than a broker or middleman between the government and those who do the work or furnish the materials required in the performance of the contract. In the case of a million-dollar contract few contractors are in a position to pay cash for the labor and materials required. Subcontractors must be called in, and the contractor must furnish with his bid a

list of those who will so undertake, in order that his ability to proceed with the work may be determined. Subcontractors come in readily enough because they expect to get their money out of the progress-payments made by the government to the contractor, or out of the retained percentage due the contractor upon the completion of the work, or, failing these, out of the sureties on the contractor's bond. When the work is done, if the contractor be dishonest or be in financial straits, there is obviously a strong temptation to him to get the $100,000 retained percentage into his hands and make off with it, or apply it to the discharge of other liabilities than those for which the surety is bound, leaving the surety to pay the claims of those who furnished the labor and materials for the work.

The surety has but one effective means of frustrating a scheme of that kind, namely, the institution of a suit in the Supreme Court of the District of Columbia to establish his lien upon the retained percentage of the contract price, to enjoin payment of such percentage to the contractor, and, by the appointment of a receiver, to compel application of the percentage to his exoneration and relief in the payment of the claims for labor and materials, or to his reimbursement, by way of subrogation, in those cases in which he has been compelled to pay such claims in order to avoid a suit upon his bond.

It is necessary that such suit be instituted in the District of Columbia because only in that jurisdiction is to be found the official against whose acts the injunction is sought, namely, the head of the department or other establishment under whose direction the contract was made and who has control of the fund involved. With the heads of the departments denying the authority of the courts to appoint receivers of the retained percentage and refusing to recognize them when so appointed, the necessity for the injunction will be readily perceived.

The object of this brief is to bring to the attention of the court certain arbitrary rulings of the present Comptroller of the Treasury that practically deny to sureties on the bonds of government contractors the benefit of the decisions of this court referred to in the foregoing pages—rulings upon which is predicated the refusal of the Secretary of the Treasury to pay over the fund involved in this case.

We here subjoin extracts from the published decisions of the Comptroller in which certain of these rulings appear.

(Extract from 23 Compt. Dec. 678).

"In reference to receivers appointed by a court in the District of Columbia to receive money due from the United States to a defendant in the case, it is the practice not to make payment to such a receiver, the accounting officers of the Treasury holding that such a payment is not a proper compliance with the law requiring payment to the principal, and such a proceeding is in the nature of an attachment or garnishment and similar in its purpose to a writ of mandamus.

The decision whether public money shall be paid to one claimant or another must be made by the Treasury Department. If one not paid enters suit against the United States he may obtain judgment and the United States thus pay twice, but the responsibility for the first decision must rest upon the accounting officers of the Treasury, and they do not escape their responsibility or release the liability of the government by paying to any receiver that may be appointed by a court."

(Extract from 25 Compt. Dec. 983).

"If receivers present a claim to the United States for payment it is for the proper officers of the United States to examine their authority to receive it with a view to determining whether a payment made to them would

be a good acquittance. (Price vs. Forrest, 173 U. S., 410, 423.)

The proceedings were brought solely to obtain possession of the fund and there was no particular claim against the United States giving the right to receive it. The procedure in substance was the equivalent of an attachment, which does not lie against the United States. Where moneys are due from it the United States is not a stakeholder, with authority in some one else to determine to whom the moneys shall be paid, and they can not be paid out of the Treasury subject to future determination to whom they shall be paid. One demanding payment from the United States in a representative character must present an authority to receive it conclusive of all others, otherwise the payment can not be made. (Borcherling vs. United States, 185 U. S., 223.)

The opinion of the accounting officers of the Treasury has now for some years past been fully declared with respect to withdrawing moneys from the Treasury in this manner and placing them under the control of another forum to determine who shall finally receive them.

The moneys must remain in the Treasury until the one having final authority to receive them is determined."

That is as much as to say that the opinion of the Comptroller that no court has power to appoint a receiver of a fund in the Treasury and to determine who shall finally receive it, has, for some years past, been fully declared, and that if such a receiver be appointed the money must remain in the Treasury until the person entitled to receive it is determined by the Comptroller of the Treasury.

The court, it is understood, will take judicial notice of the fact that the Treasury Department has acquiesced in these decisions of the Comptroller, and has announced through

its appropriate officers that it will pay no attention to court orders appointing receivers and directing the payment of a fund in the Treasury to them, except as otherwise advised by the Comptroller.

1 Chamb. Best's Ev. Secs. 648, 652-3-4.

In view of the decision of this court in Price vs. Forrest and United States vs. Borcherling, *supra,* that the appointment of a receiver of the assets of a defendant passes to the receiver title to a fund in the Treasury belonging to the defendant, that the government will be fully protected in making payment of such fund to the receiver, and that it will be liable to the receiver if it makes any other disposition of the fund, we fail to perceive what there is for the Comptroller to decide when the receiver presents himself at the Treasury and asks that the fund be delivered to him, unless he (the Comptroller) claims the power to go behind the decree of the court, make new findings of law and of fact, and adjudicate the rights of the parties anew. If such argument as he has advanced in his published decisions be sound, then, in the event of an affirmance of the decree below by this court and another demand upon the Treasury for the fund, it will be for him to decide whether this court was right or wrong in its decision and whether payment shall be made in accordance therewith.

The law defining the powers of the Comptroller of the Treasury, so far as the questions here involved are concerned, is found in Sec. 8 of the "Dockery Act" (28 Stats L., 207), and is as follows:

> Sec. 8. The balances which may be certified by the Auditors to the Division of Bookkeeping and Warrants, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any person whose accounts may

> have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government: *Provided*, that the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the re-examination of any account.
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> * * * * * * * * * *
>
> Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

These provisions, by their express terms, make the decisions of the Comptroller conclusive only upon the executive branch of the government. There is nothing in them to justify an inference that his decisions are to be conclusive also upon the courts of the land and supersede their power to decide, in a proper case, that it is the mere ministerial duty of the head of a department to pay, or cause to be paid, public money to a particular person, and, by the writ of mandamus or mandatory injunction, compel the performance of that duty. The fact that such decisions are declared to be conclusive "upon the Executive Branch of the Government" shows that it was not the intention of the legislature by that provision to derogate from the exclusive jurisdiction of the courts to determine the rights of opposing claimants of a fund held by the government as a stakeholder, nor to

confer upon the Comptroller the powers of a chancellor to decide which of the parties has the better right to the fund, or to decide other matters in which the government is not concerned.

Very much the same provisions were contained in the Act of March 30, 1868, subsequently incorporated in Sec. 191 of the Revised Statutes (now repealed by the Dockery Act), which provided that

> "The balances which may from time to time be stated by the Auditor and certified to the heads of Departments by the Comptrollers of the Treasury upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government."

For many years prior to that act there had been a dispute, acrimonious at times, between the Comptrollers and the heads of departments as to whether the latter were vested by law with power to direct a modification or change in the balances certified to them by the accounting officers of the Treasury. In one instance the dispute resulted in an appeal to the President, who referred the question to the Attorney General, who responded in a long opinion to the effect that the head of a department might lawfully return the account to the accounting officers with directions that it be stated in conformity with his views.

5 Opin. Atty. Gen. 630, 651.
8 Opin. Atty. Gen. 293, 297.

After these opinions the question was agitated for some years longer until finally, the accounting officers getting the better of the heads of departments in Congress, the Act of March 30th, 1868, making their balances "conclusive upon the executive branch of the Government" was passed.

So, considering the history of the legislation relating to the powers of the accounting officers and the evils that were intended to be remedied thereby, it seems too clear for argument that it was never the intention of the legislature, by the provisions mentioned, to invest a subordinate officer of the Treasury Department with power to override the judgments of the courts in those cases in which they determine it to be the ministerial duty of a particular officer, requiring the exercise of no official discretion, to pay over public money to a particular person.

In a very recent case, a disbursing officer, acting under the directions of the Comptroller of the Treasury, made certain deductions from the compensation of a federal judge. A peremptory mandamus requiring him to pay the amount of the deductions to the judge was sustained by the Circuit Court of Appeals, after argument against it by the Comptroller of the Treasury in person, and the judgment of that court was affirmed by this court.

Smith vs. Jackson, 248 U. S., 388; 241 Fed., 747.

It is impossible to reconcile that decision with the rulings of the Comptroller that the courts have no power to direct a payment of public money that is not sanctioned by him.

The objection of the Comptroller to suits of this kind, that they are practically an attachment or garnishment of funds in the hands of the United States, is without merit, in view of the decisions of this court in Price vs. Forrest and United States vs. Borcherling, *supra*, that a receiver of such fund may be appointed by the courts, and that the United States must pay such fund to the receiver.

Apart from those decisions, however, the objection is without merit. The reasons of the rule prohibiting the at-

tachment or garnishment of funds in the hands of the United States are that process of that kind might materially interfere with the operations of the government by stopping the salaries of employees, progress-payments to contractors, and the like, and would leave to some court other than those in which the United States may be sued the determination of the question of an indebtedness on the part of the United States. These reasons have no application to suits of the kind here being considered; for it is admitted by the plaintiffs that such suits cannot be maintained except in those cases where the liability of the United States to the nominal owner of the fund has been previously determined by the proper authority, and the fund is held by the United States only as a stakeholder. In such cases, the suit to enforce the plaintiff's lien cannot possibly impose an additional liability upon the government or interfere with its operations in any way.

Another objection of the Comptroller to these suits is that payment of the fund involved to the receiver does not discharge the United States from the claims of the nominal owner of the fund, but leaves the United States exposed to a suit by him to recover the fund.

This objection is without merit because it ignores the decision of this court in Price vs. Forrest, *supra*, that payment to the receiver operates a discharge and acquittance of the United States.

The objection is also obviously without merit in those cases in which the nominal owner of the fund is a party defendant to the suit and before the court when the decree is passed establishing plaintiff's lien upon the fund. He would, of course, be estopped by such decree and could not thereafter maintain an action to recover the fund.

Possibly it was the intention of the Comptroller that this objection should be limited to those cases in which the suit is against a non-resident nominal owner of the fund who is brought in by publication of process under Sec. 105 of the Code of the District of Columbia. In such a case the merit of the Comptroller's objection rests upon the question whether a fund in the Treasury of the United States in which the government is interested only as a stakeholder, is "property within the jurisdiction of the court" within the meaning of that section, which provides as follows:

> Sec. 105. Publication may be substituted for personal service of process upon any defendant who cannot be found, and who is shown by affidavit to be a non-resident * * * in suits for partition, divorce, by attachment, foreclosure of mortgages and deeds of trust, the establishment of title to real estate by possession, the enforcement of mechanics' liens, and all other liens against real or personal property within the District, and in all actions at law and in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

In the early case of Vaughan vs. Northup, 15 Pet. 1 (1841), this court held that a debt due by the United States, being payable anywhere in the United States, is not local assets of a deceased non-resident creditor of the United States that will justify a grant of administration on his estate in the District of Columbia. And that decision is relied upon by the Comptroller in support of his contention that such a debt cannot be made the basis of an order of publication in the Supreme Court of the District of Columbia against a non-resident defendant.

Our reply to that contention is that the court did not have then before it the question whether a fund in the hands of

the United States in the capacity of stakeholder is "within the jurisdiction" of the Supreme Court of the District of Columbia, within the meaning of the above statute, which was enacted twenty-six years later (Act Feb. 22, 1867, Ch. 64, Sec. 7, 14 Stats., 403). Such a fund may not be assets of a decedent's estate within the District and yet be "property within the jurisdiction of the court," within the meaning of that statute. That such a fund is "within the jurisdiction of the court" seems to be the necessary consequence of the decisions of this court that a receiver of such fund may be appointed and that it is the ministerial duty of the officer having control of the fund to pay it over to the receiver, and that, failing so to do, the receiver may recover the fund in the Court of Claims. If it be the mere ministerial duty of the officer to pay the fund over to the receiver, it seems clear that a mandatory injunction would lie to compel the performance of that duty. If so, how is it possible to escape the conclusion that the fund is "within the jurisdiction of the court"? In the case of a surety claiming a lien on such fund under the decisions of this court, are the Treasury officials beyond the reach of the court when they propose to destroy such lien or make it abortive, by paying over the fund to the contractor in the face of the protest of the surety Is it possible that the surety must sit by helpless and remediless when some subordinate in the Treasury Department insists upon depriving him of the benefit of his lien by mailing a check for the retained percentage to the possibly dishonest and irresponsible principal in a distant corner of the United States? Is it possible that an injunction will not lie to prevent so great a wrong? We do not believe that this court would have so held in 1841 if such had been the facts of the case in Vaughan vs. Northup then before it, nor that this court would so hold were such a case before it now. If it be conceded that an injunction would lie in such

a case, then plainly the fund would be "within the jurisdiction of the court" within the meaning of this statute.

The Comptroller's apprehension that the government might be compelled to pay twice if it should pay the retained percentage in this class of suits to a receiver, is groundless for another reason, namely, that the fund would be applied under the direction of the court to the payment of claims for labor and materials furnished to the contractor, and the United States, in the event of a suit by the contractor in the Court of Claims to recover the retained percentage on the ground of want of jurisdiction of the Supreme Court of the District of Columbia to appoint the receiver, would undoubtedly be subrogated by the Court of Claims to the rights of those whose claims were so paid out of the retained percentage, and would be permitted to set-off such claims against that of the contractor. There have been many of these suits by sureties in the Supreme Court of the District of Columbia and many thousands of dollars have been so disbursed by receivers therein, but there has yet to be, in the Court of Claims or elsewhere, against the United States the first suit of the kind apprehended by the Comptroller. Just why a judgment against the United States in such a suit is to be anticipated, the Comptroller has not seen fit to explain.

If it should be suggested that the remedy of the surety, to enforce his claim upon the retained percentage, is by suit in the Court of Claims, the reply is that the contractor could not be made a party defendant to a suit in the Court of Claims, and, therefore, that court would have no jurisdiction to enter a judgment establishing the surety's claim upon the retained percentage, and that such a judgment, if rendered, would not be binding upon the contractor.

Inasmuch as the non-resident defendant appeared and filed an answer to the bill in this case, the question whether the fund involved in the suit is property "within the juris-

diction of the court," within the meaning of the statute, so as to support publication of process against a non-resident defendant, is not presented by the record. But inasmuch as the appellant chose to argue the question below as if it were presented by the record, and in view of the fact that there are several important cases pending in the court below in which that question is presented, it is hoped that the court will consider and decide it here.

The objection of the Comptroller that a suit by a surety against the head of a department to enjoin payment of the balance of the contract price to the contractor is really a suit against the United States and therefore cannot be maintained is answered by the language of this court in the case of Philadelphia Co. vs. Stimson, 223 U. S., 605:

> "Where complainant does not ask the court to interfere with an officer of the United States, acting within his official discretion, but challenges his authority to do the act complained of, the suit is not against the United States."

Does the head of a department act within his official discretion when he proceeds to destroy the surety's lien on the balance of the contract price by directing payment of such balance to a contractor who has neglected and refused to pay the claims for which the surety is bound? Does not the surety challenge the authority of the head of the department so to destroy his lien when he seeks to prevent such destruction by invoking the injunctive process of the court?

In several cases this court has held that the courts cannot interfere with the official discretion of an officer of the United States in respect to the payment of claims against the United States.

Decatur vs. Paulding, 14 Pet. 521.
Brashear vs. Mason, 6 How., 92.
U. S. vs. Guthrie, 17 How., 284, 303.

But in each of these cases the attempt was to compel the head of a department, by mandamus, to pay a claim against the United States which was vigorously disputed and denied by him.

In Redfield vs. Windom, 137 U. S., 636, it was held that the Secretary of the Treasury could not be compelled to pay over the balance of the contract price of certain work to a receiver in a suit against the contractor, so long as the contractor was in default in the fulfillment of a provision of the contract which required him to pay the claims of those who furnished labor and materials for the work.

And in Wyman vs. Halsted, 109 U. S., 654, it was held that the Secretary of the Treasury might pay a debt of the United States to an administrator of the deceased creditor appointed in the State of such creditor's domicil, or to an ancillary administrator appointed in the District of Columbia, and that the exercise of his discretion in that regard could not be controlled by the writ of mandamus.

None of these cases support the contention of the Comptroller, because in each of them the plaintiff sought, by the writ of mandamus, to control the official discretion of the head of a department in the payment of moneys out of the Treasury of the United States.

Where a government contract has been fully performed, the accounts of the contractor settled, and nothing remains to be done except to make payment of such balance to the proper party, are the head of the department and the Comptroller of the Treasury charged with the duty of ascertaining and establishing the rights of the surety in that balance? Is not that the exclusive province and duty of the courts of

the land, and is it not the duty of the head of the department to abide by the decision of the court in that respect, and make payment of such balance as the court may direct? And is not the surety entitled to the aid of the courts to compel the performance of that duty by him?

Kendall vs. United States, 12 Pet., 524.
Roberts vs. United States, 176 U. S., 221.
Parish vs. MacVeagh, 214 U. S., 124.
Smith vs. Jackson, 248 U. S., 388.

It is respectfully submitted that the decree of the court below should be affirmed.

CHAPMAN W. MAUPIN,
Amicus Curiæ, and Attorney for Plaintiffs in Pending Suits Involving the Questions Raised on This Appeal.